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(5500\*98)

Attorney Reference No. PH96038

TECH CENTER 1600/2900



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

COPY OF PAPERS  
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XAVIER MARZE

SERIAL NO: 09/180,477

FILED: FEBRUARY 5, 1999

FOR: PROTECTION AGAINST TERMITES

:

: ART UNIT: 1616

: EXAMINER: LEVY, N.

:

Commissioner for Patents  
Washington, D.C. 20231

I hereby certify that this paper, along with any other paper or fee referred to in this paper as being transmitted herewith, is being deposited with the United States Postal Service with sufficient postage as First-Class Mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231 on this 31st day of October 2001.

By: Barbara J. Miller

### REQUEST FOR RECONSIDERATION

Sirs:

In response to the Notice of Improper Request for Continued Examination (RCE) dated October 19, 2001, and the Notice of Abandonment dated October 24, 2001, in connection with the above-identified patent application, applicant respectfully requests reconsideration of the abandonment decision for the reasons set forth below.

It is respectfully submitted that the Notice of Improper Request for Continued Examination (RCE) is incorrect because applicants never filed such a Request.

Applicants filed a Continued Prosecution Application (CPA) for the above-identified application on August 27, 2001 (copy enclosed). Applicant was entitled to file the Continued Prosecution Application because the above-identified patent application was filed as a utility application on February 5, 1999 (i.e., before May 29, 2000).


A copy of the Notice of Improper Request for Continued Examination is enclosed.

The Notice of Abandonment states that the present application has been deemed abandoned as a result of applicant's failure to respond to an Office Action dated February 28, 2001. Applicant asserts that it responded in a timely manner to the Office Action by filing the Continued Prosecution Application on August 27, 2001, and paying the applicable extension fees.

The Notice of Abandonment also states that the RCE Request was improper because "CPA practice no longer applied." This statement is clearly in error. Applicant was entitled to file a CPA on August 27, 2001.

For the above reasons, applicant requests that the Notice of Improper Request for Continued Examination and the Notice of Abandonment be withdrawn.

Respectfully submitted,  
CONNOLLY BOVE LODGE & HUTZ LLP

By   
William E. McShane  
Registration No. 32,707  
Telephone: 302/658-9141

Enclosures  
::ODMA\HODMA\CB;170094;1



**UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/180,477	02/05/99	MARZE	X 022650-498

WILLIAM E MCSHANE  
CONNOLLY BOVE LODGE & HUTZ LLP  
1220 MARKET STREET  
P O BOX 2207  
WILMINGTON DE 19899

HM42/1019

EXAMINER

LEVY, N

ART UNIT PAPER NUMBER

1616

DATE MAILED: 10/19/01

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

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MAR 15 2002

**TECH CENTER 1600.2300**



APPLICATION NUMBER

FILING DATE

FIRST NAMED APPLICANT

ATTY. DOCKET NO./TITLE

COPY OF PAPERS  
ORIGINALLY FILED

DATE MAILED:

**NOTICE OF IMPROPER REQUEST FOR CONTINUED EXAMINATION (RCE)**

The request for continued examination (RCE) under 37 CFR 1.114 filed on 8/27/01 is improper for reason(s) indicated below:

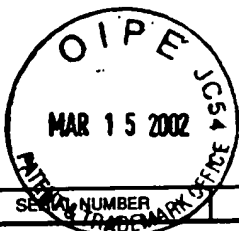
- ☐ 1. Continued examination under 37 CFR 1.114 does not apply to an application for a design patent. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d).
- ☐ 2. Continued examination under 37 CFR 1.114 does not apply to an application that was filed before June 8, 1995. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d).
- ☒ 3. Continued examination under 37 CFR 1.114 does not apply to an application unless prosecution in the application is closed. If the RCE was accompanied by a reply to a non-final Office action, the reply will be entered and considered under 37 CFR 1.111. If the RCE was not accompanied by a reply, the time period set forth in the last Office action continues to run from the mailing date of that action.
- ☐ 4. The request was not filed before payment of the issue fee, and no petition under 37 CFR 1.313 was granted. If this application has not yet issued as a patent, applicant may wish to consider filing either a petition under 37 CFR 1.313 to withdraw this application from issue, or a continuing application under 37 CFR 1.53(b).
- ☐ 5. The request was not filed before abandonment of the application. The application was abandoned, or proceedings terminated on \_\_\_\_\_. Applicant may wish to consider filing a petition under 37 CFR 1.137 to revive this abandoned application.
- ☐ 6. The request was not accompanied by the fee set forth in 37 CFR 1.17(e) as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.
- ☐ 7. The request was not accompanied by a submission as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.

**Note:** If a request for a continued prosecution application (CPA) under 37 CFR 1.53(d) has been filed in the utility or plant application (including a previously filed CPA) that was filed on or after May 29, 2000, the request for a CPA has been treated as a RCE because the CPA practice no longer applies to such application. The constructive RCE, however, is improper for reason(s) indicated above.

**A copy of this notice MUST be returned with any reply.**

Direct the reply and any questions about this notice to:

\_\_\_\_\_, Examining Group \_\_\_\_\_



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

SECT. NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
09/180,477	02/05/99	MARZE	X 022650-498

WILLIAM E MCSHANE  
CONNOLLY BOVE LODGE & HUTZ LLP  
1220 MARKET STREET  
P O BOX 2207  
WILMINGTON DE 19899

HM12/1024

EXAMINER	
LEVY, N	
ART UNIT	PAPER NUMBER
1616	21

DATE MAILED:

10/24/01

NOTICE OF ABANDONMENT

This application is abandoned in view of:

- ☒ Applicant's failure to respond to the Office letter, mailed 2/28/01
- ☐ Applicant's letter of express abandonment which is in compliance with 37 C.F.R. 1.138.
- ☐ Applicant's failure to timely file the response received \_\_\_\_\_ within the period set in the Office letter.
- ☐ Applicant's failure to pay the required issue fee within the statutory period of 3 months from the mailing date of \_\_\_\_\_ of the Notice of Allowance.  
☐ The issue fee was received on \_\_\_\_\_  
☐ The issue fee has not been received in Allowed Files Branch as of \_\_\_\_\_

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In accordance with 35 U.S.C. 151, and under the provisions of 37 C.F.R. 1.316(b), applicant(s) may petition the Commissioner to accept the delayed payment of the issue fee if the delay in payment was unavoidable. The petition must be accompanied by the issue fee, unless it has been previously submitted, in the amount specified by 37 C.F.R. 1.17(l), and a verified showing as to the causes of the delay.

If applicant(s) never received the Notice of Allowance, a petition for a new Notice of Allowance and withdrawal of the holding of abandonment may be appropriate in view of Delgar Inc. v. Schuyler, 172 U.S.P.Q. 513.

- ☐ Applicant's failure to timely correct the drawings and/or submit new or substitute formal drawings by \_\_\_\_\_ as required in the last Office action.  
☐ The corrected and/or substitute drawings were received on \_\_\_\_\_
- ☒ The reason(s) below.

The RCE request was improper -  
CPA practice no longer applied - see letter  
10/17/01.

*Neil S. Levy*

NEIL S. LEVY  
PRIMARY EXAMINER